

J. P. Stevens & Co., Inc. and Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC.
Cases 10-CA-15305, 10-CA-15328, and 10-CA-15438

20 October 1983

DECISION AND ORDER

On 18 August 1981 Administrative Law Judge David L. Evans of the National Labor Relations Board issued his decision in the above-entitled proceeding, and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed a brief in support of the administrative law judge's decision.¹

On 13 October 1983 the parties entered into a Settlement Stipulation, subject to the Board's approval, providing for the withdrawal of all exceptions to the judge's decision,² and the entry of a Board Order based on the Order set forth in the judge's decision. The Stipulation further provides that the Stipulation, together with the judge's decision, the amended consolidated complaint, and the record made before the judge shall constitute the entire record herein. In addition, the parties stipulate that the Respondent's signing of the Settlement Stipulation does not constitute an admission that it has violated the Act.

Having considered the matter, the Board approves the Settlement Stipulation, and the exceptions filed by the General Counsel and the Charging Party are withdrawn.

As no exceptions to the judge's Decision remain,

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, J. P. Stevens & Co., Inc., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ On 16 October 1981 the Board remanded this proceeding for reconsideration in light of a brief which had been previously filed by the General Counsel but not received by the judge. On 20 November 1981 the judge issued a Supplemental Decision in which he adhered to his original decision.

² In the Settlement Stipulation the parties state that all parties filed exceptions and/or cross-exceptions to all or part of the judge's decision and that all parties now withdraw all exceptions and cross-exceptions. Although the Charging Party and the General Counsel filed exceptions, the Respondent filed a brief in support of the judge's decision. We find that the parties' apparent inadvertent error with regard to the Respondent having filed exceptions and/or cross-exceptions has no effect on the validity of the Settlement Stipulation.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge: This proceeding was tried before me at Tifton and Atlanta, Georgia, on 20 different days between January 5 and March 3, 1981, pursuant to a consolidated complaint issued June 24, 1980, which was amended at the hearing. The charges were timely filed and served on December 17, 1979,¹ and January 3 and February 1, 1980, by Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC (the Union). The complaint alleges violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended (the Act), in that J. P. Stevens & Co., Inc. (the Respondent), by its agents, unlawfully interrogated and threatened employees, promised them benefits, solicited the employees to withdraw from the Union, threatened to withdraw benefits, and did withdraw increased benefits from the employees, threatened employees that economic strikers would have no rights to jobs after a strike if they are permanently replaced, disparately enforced a no-distribution rule and prohibited distribution of union leaflets, issued an oral warning notice to employee Lewis Hall and harassed employee Joe Lewis Robinson because of their union activity, all in violation of Section 8(a)(1) and (3) of the Act. The complaint further alleges that the production and maintenance employees of the Respondent's two plants in Tifton, Georgia, constitute a unit appropriate for bargaining under the Act, that since October 21 the Union has been the majority representative of the employees in said unit, that although requested on that date the Respondent has refused to bargain with the Union as such representative, and that such refusal and unilateral actions thereafter constitute violations of Section 8(a)(5) of the Act. The Respondent timely answered these allegations and denies the commission of any unfair labor practices. Upon consideration of the record,² my observation of the witnesses as they testified, and the excellent post-trial briefs filed by the Charging Party and the Respondent,³ I make the following

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The complaint alleges, the Respondent admits, and I find that J. P. Stevens & Co., Inc. is a Delaware corporation engaged in the manufacturing and distribution of textile products at its plants in Tifton, Georgia, and that during the 12 months preceding the issuance of the complaint, a representative period, the Respondent sold and shipped finished products valued in excess of \$50,000 from said plants directly to customers located outside the State of Georgia and that the Respondent is and has been at all times material herein an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

¹ Unless otherwise specified all dates herein referred to are in 1979.

² The Charging Party's unopposed motion to correct the record in various minor and obvious respects is granted.

³ The General Counsel did not submit a brief.

II. LABOR ORGANIZATION

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

The Respondent operates two plants in Tifton, Georgia (plants 1 and 2), which produce apparel cloth and carpet yarn. At all times material herein, manager of both plants was Billy Smith; Robert Case was the superintendent for plant 1 and Denton Coleman was the manager for plant 2. Thomas McDaniel was a department manager of the die house which is located in Plant 2. (At some time before the hearing, the title of "department manager" was created to replace a former designation of "overseer" which is mentioned in other Stevens' cases.) Reporting to the various department managers in plants 1 and 2 were various shift supervisors including: Josephine Brooks, Frank Edenfield, Edward Griffith, and Billy Kimbrough. Also involved in this proceeding were two corporate executives: Donald Johnson, vice president, and Harold Addis, vice president and corporate personnel director. All of these individuals are supervisors or agents of the Respondent within the meaning of Section 2(11) or (13) of the Act.

The two plants at the time of the events in question employed about 715 production and maintenance employees.⁴ The Union began a campaign to organize these employees about May 1976. During the initial stages of the campaign the Respondent violated Section 8(a)(1) in various respects as found in *J. P. Stevens & Co., Inc.*, 240 NLRB 33 (1979), enf. sub nom. 612 F.2d 881 (4th Cir. 1980), cert. denied 446 U.S. 916 (1980).

In June 1979 the Union sought to obtain fresh authorization cards and intensified its campaign. The Respondent and the Union signed a Stipulation for Certification Upon Consent Agreement in which they stipulated that the two plants constitute separate appropriate units and elections were scheduled for December 20. The election was blocked by filing of the initial charge herein. The complaint now seeks a bargaining order covering all production and maintenance employees of both plants in one unit. The Respondent contends that only separate units are appropriate and that the Union should be bound to its prior stipulation. In view of my findings herein, the issues raised by these contentions are mooted. My findings and conclusions on the allegations of violations of Section 8(a)(1), (3), and (5) of the Act by the Respondent during the 1979 campaign period are as follows.

A. Solicitation of Yancey to Withdraw from the Union by Brooks

About October 1, employees began submitting, mostly by mail, to the Union signed, preprinted forms which expressed that the employees sought to "specifically and totally revoke the authorization card or cards signed by me, at J. P. Stevens employee."

⁴ The employees worked three shifts: "A" from 12 a.m. to 8 a.m.; "B" from 8 a.m. to 4 p.m.; and "C" from 4 p.m. until midnight.

The complaint, paragraph 16, alleges that one of these revocations was the product of supervisory coercion directed at employee Vernon Yancey.⁵

Yancey, a man in his early twenties, was employed at the time of hearing as a cloth roller in the mending department, in plant 1 on the B (8 a.m. to 4 p.m.) shift. He was under the supervision of Supervisor Josephine (Jo) Brooks and, at times, Supervisor Edwina Walker.

Yancey testified that he had three "conversations" or exchanges with Supervisor Brooks concerning the Union during the campaign of 1979. The first, which Yancey placed at November 7, occurred at his rollup machine. Yancey testified:

She came up to me and said I ought to go ahead and sign my revoke card before they had the election which was going to be held. And I told her to go get me—to get me a revoke card and I would. And she went over to Helen Wilkerson's [sic] table and got one and brought it back to me and later on that day, after I got through and all, working and cleaning up my machine, I signed the revoke cards and gave them back to Jo Brooks, and she took them back to Helen Wilkerson [sic].

"Wilkerson," who is actually Helen Wilkinson, was an employee who actively campaigned against the Union and sought to get other employees to sign revocation forms. The plural reference to "cards" is explained by the fact that some of the revocation forms which were circulated were in duplicate.

Yancey testified that during the 2 weeks following the execution of the revocation, he signed another union authorization card. During that 2-week period Brooks took a vacation. Yancey testified that, on a day after Brooks returned from vacation, he went to Brooks' office to secure a pen for marking rolls of cloth and found Brooks and Wilkinson present. According to Yancey's testimony on direct examination:

... and I said, Jo, while you was gone I signed a union card. And she said, why did you do it. And I said, me and ... [Edwina] Walker had got into it and she was accusing me of things which I wasn't doing.

On direct examination, Yancey testified to no response by Brooks or Wilkinson and stated only "after that they walked downstairs and I went back to my job." Yancey further testified on direct examination that after his statement in the office, and after he had returned to his work area:

She [Brooks] came up to my roll-up machine and started talking to me and said I ought to go ahead and sign the revoke card before they held that election ... I told her let me think about it a little bit, and she come back later on that same day and I told her to—I'd get a revoke card and sign it.

⁵ Only one other revocation is alleged to be the product of supervisory solicitation, that of employee Hayman by Supervisor Edenfield, as discussed infra.

Yancey was not asked to explain what he meant by "the" revoke card; there was no suggestion by Yancey that he had been given another one by Brooks, Wilkinson, or anyone else at that time. Yancey testified that later the same day he went to the work bench of employee Gladys Blanchard.⁶ Yancey testified that at Blanchard's work bench he signed a second revocation card, giving Blanchard the original and keeping a copy of it. When asked how he knew to go to Blanchard's work bench to get such revocation forms, Yancey then testified that in the November 7 conversation Brooks had also told him that he could get one from Blanchard or Wilkinson.

Yancey testified that after he signed the second revocation he signed a third authorization card and a third revocation form. Although not setting a date on direct examination, Yancey testified that Brooks:

. . . came up to me and I was working on the roll-up machine and she came up to me and said I heard you signed a union card . . . I said, yes, I have . . . She said, you need to get your card back. Get it revoked before they have this election now. I said, well, okay, and she went and got that revoke paper from Gladys [Blanchard].

During the direct examination I asked Yancey and he testified:

JUDGE EVANS: Very well. How did you receive the third [revocation] form?

THE WITNESS: Jo Brooks, the supervisor, went to Gladys [Blanchard] and got it from her.

Yancey signed a pretrial affidavit on January 3, 1980, or within 2 months of the events described in his direct examination. The affidavit states that he signed four authorization cards, not three, in 1979. Yancey acknowledged that his recollection would have been better in January 1980 than it was a year later, or at the time of the hearing. The affidavit further states: "I revoked one card on November 7, 1979, and nearly revoked another on December 18, 1979," and there was no mention of a third revocation form. Yancey testified, again, that the affidavit was correct, but also testified that he signed a third revocation form "between November 7 and December 18." When asked why he mentioned in the affidavit only two revocations being signed, he responded: "I didn't think about it at the time," and doggedly insisted that he signed a total of three revocation cards, the third of which he got back. Received in evidence was a revocation form dated November 14, 1979. Yancey testified that this was his second revocation form to sign. Yancey was asked on cross-examination:

Q. Okay. What happened to the third revocation form you signed?

A. I don't know.

Q. Who did you give it to?

⁶ Yancey referred to Blanchard as Gladys Walker; the individual referred to had reassumed the name of Blanchard at the time of the hearing and she shall be referred to as Blanchard, especially in order to avoid confusion with Supervisor Edwina Walker.

A. Helen Wilkerson [sic].

Later, on cross-examination Yancey testified that he got the third revocation back from Blanchard himself; therefore, he did, in fact, know what happened to it.

Yancey was further asked on cross-examination if on November 14, when he went to the office and told Brooks and Wilkinson that he had signed a second union card, either of them then said anything about his revoking the card. Yancey replied negatively and indicated, again, that the November 14 mention of revoking of the card was only "after a while—after we came back downstairs—" and not in Brooks' office. Yancey specifically denied that he said anything about revoking the card on that occasion while he was in Brooks' office. However, he acknowledged that in his pretrial affidavit he testified that he told Brooks and Wilkinson while he was in the office: "I want to revoke it again, if you'll get me some more revoke cards . . . The three of us went downstairs to my machine." When asked to explain the conflict Yancey replied that his memory would have been better at the time he gave his pretrial affidavit. Yancey further acknowledged that his pretrial statement did not reflect any questions asked by Brooks in the office meeting of November 14 and acknowledged that it would be correct to state that at that time Brooks asked him no questions at all. This, of course, is directly in conflict with his testimony that Brooks, when advised that he had signed the second authorization card, asked him directly: "Why did you do it?"

Further on cross-examination Yancey was asked if he asked Gladys Blanchard for the third revocation form. He responded: "No, sir. I didn't ask her for a revoke card." However, Yancey acknowledged that in his pretrial statement he said: "On December 18, 1979, I asked [Blanchard] for another revoke which I signed and returned to her. It was my idea," which testimony also conflicts with his above-quoted answers that he got the third revocation form from Brooks and gave it to Wilkinson. Further, regarding the third revocation, apparently⁷ executed on December 19, Yancey testified that on that morning he asked Brooks to go to Blanchard to retrieve the third revocation form because he wanted to think about it some more. He testified that Brooks stated that she would do what he asked. He further testified that after going off Brooks returned and stated that Blanchard said for him to come get it himself and that he did so later in the day.

Testimony of Brooks on Yancey

Josephine Brooks, who was still employed as the mending department supervisor at the time of trial, testified that she had three exchanges with Yancey about a union card. The first she placed in October or November of 1979 in the aisleway around the work station of Gladys Blanchard who Brooks said was present. When asked on direct examination what was said she testified:

⁷ It was not placed in evidence; the Union never received a third revocation form, if there was one.

A. Well, Vernon Yancey come up to me that morning kind of fast-like, and sort of excited-like, he said, "I've done it again; I've done it again; I've done it again."

Q. He said that three times?

A. Yes, sir. I said, "What have you done?" He said, "I signed a union card," said, "Wayne made me do it." I said, "Well, what has Wayne done to you?" He said, "He made me mad."

Brooks identified "Wayne" as Wayne Nolan, a department head. Brooks denied that anything was said about revocation of the card at that time.

Brooks testified that on a second occasion which she placed in November, at a time when she was passing by Yancey's work station:

... he stopped me. He said, "I'm thinking about revoking my union card" and I said, "Oh?" He said, "Go get me a form, and I'll sign it." I just sort of shook my head. I said, "Unh—Unh" [negative], "You get you one," and I went on.

Brooks denied that anything else was said in this exchange.

Brooks testified that was a third exchange regarding union authorization cards between herself and Yancey on Monday following the Thanksgiving vacation:

Well, he just ran up there again. He said, "I done it again; I done it again." I said, "What?" He said, "I've signed another union card," said, "Edwina [Walker] made me mad," said, "I told you I couldn't work for that blond-headed bitch." I said, "You ought to be ashamed of yourself."

(Edwina Walker, who testified, has brilliant blonde hair.) Brooks denied that anything else was said in the exchange and denied specifically that revocation of cards was mentioned in any way and further denied that she asked Yancey why he had signed a card at that time.

On cross-examination Brooks denied knowing that Helen Wilkinson kept revocation forms at her work station or that Gladys Blanchard had some at hers; in fact, she denied seeing any in the work area or the break area and admitted seeing such a form only as a handout at the gate.

Testimony of Helen Wilkinson

Wilkinson was employed at the time of the events in question and at the time of the hearing as a mending instructor and a mender in the department supervised by Brooks and Walker. Wilkinson actively solicited revocation forms from employees who had signed authorization cards for the Union. She sometimes paid the approximately⁸ \$1.50 postage fee for certified mail herself, and sometimes she collected funds from other employees for that purpose. There is no allegation of financial or other sponsorship of this activity by the Respondent.

⁸ As the single-page forms were collected and sent by certified mail to the Union, the parties posting the letters were charged various amounts between \$1.20 and \$1.60 by the Post Office Department.

Wilkinson testified that she gave Blanchard two revocation forms to be used by Yancey. One of these Blanchard returned in October or November along with \$5 to cover cost of mailing. Wilkinson testified that thereafter Yancey stopped her as she was walking by his work station and said that he needed another letter to revoke his card because he had signed another union authorization card. According to Wilkinson she replied:

Well, there is no need for me to get you another card—another letter—if you are going to keep signing union cards. I said, "I'm not paying for any more of your letters to be revoked" and I went on.

Since Blanchard gave Wilkinson \$5 to cover the \$1.50 mailing charge, it is unclear why Wilkinson would have said anything to Yancey about her paying for his letters to be revoked.⁹ At any rate, Wilkinson denied that she was ever present when Brooks and Yancey discussed anything about a union or that Brooks was present when she discussed his attempts to revoke his union authorization card. On cross-examination Wilkinson denied ever handing revocation forms to Young in the presence of Brooks.

Employees Doris Roberts and Gladys Blanchard testified that they were the individuals who solicited two revocations from Yancey. Roberts testified that at some time in October Yancey indicated to her that he had signed a union card but was really not for the Union. Roberts told Yancey that she would see what she could do to help him get it revoked. Roberts testified that she went to Supervisor Brooks and asked "where you could send out to revoke it." Brooks told Roberts that she would get the address from personnel. Roberts testified that Brooks gave the address to Blanchard but testified to no further involvement in a revocation by Yancey if there was one at that point. She testified that later in October she asked Yancey if he still wanted to revoke his card and he replied affirmatively. Then Roberts "called Gladys Blanchard over there and she told him that she would get him a form to fill out and put his name and address and all on it. And so he went over there and she gave him a card and he taken it home, I think." Roberts did not know whether a revocation was executed by Yancey at that point. According to Roberts a couple of days later Yancey approached her and asked again if she had the address for mailing the revocation form. At that point, according to Roberts, she escorted Yancey to Blanchard's work table and left when Yancey "was fixing to sign the paper." Roberts testified that she had no further conversations with Yancey regarding union cards but did corroborate Brooks to a certain extent by saying that after Thanksgiving, in reference to Walker, Yancey at one point told her "that blond-headed bitch made [me] mad."

Gladys Blanchard testified that at a date which she placed in August 1979, Roberts called her over to her work station where Yancey was present and asked her

⁹ On cross-examination Wilkinson testified that Blanchard told her to keep the change from the \$5 to be used for other mailing and that she did spend some of "my money" to mail the revocations which she solicited.

"if I knew how to get the card, and I told her that we'd get the address." Blanchard then went to Brooks who, in turn, went to the personnel office where she got the address to which the revocations were to be sent. Blanchard also went to Helen Wilkinson's desk and got a revocation form and returned it to Yancey.

Blanchard further testified that in November she was again at Roberts' work station when Yancey again indicated that he wished to revoke an authorization card and she again got a form from Wilkinson. Yancey signed the revocation form in her presence and she gave it to Wilkinson, with \$5, to mail.

Blanchard testified that on another occasion, later in November, Yancey approached her and said:

Well, I did it again. I have did it again. And I said, you have done what again. And he said, well, I did it. And I said not sign another Union card. And he said yes, I have. And I said, well, I'm going to tell you one damn thing—that's what I said—that if you get another one revoked, you will get it from someone else, and you will pay for it yourself.

According to Blanchard, Yancey laughed and walked off.

Conclusions on Brooks-Yancey Solicitation Allegation

Yancey's testimony vacillated as much did his union allegiance. An unnaturally skittish demeanor and the enumerated conflicts within his testimony at hearing (as well as the conflicts manifested when his testimony at hearing is compared with the testimony contained in his pretrial affidavit) render Yancey incredible, and therefore it is impossible to find a violation based on his testimony to the effect that at some time or another during 1979 he was coerced into signing one or more revocation forms by Brooks. On the other hand, Brooks had a credible demeanor and there is nothing in the record, independent of Yancey's discredited testimony, that would tend to discredit her.¹⁰ Additionally, employees Wilkinson, Blanchard, and Roberts credibly testified that they jointly solicited two revocation forms from Yancey before Thanksgiving 1979, and there was no participation by Brooks except that Blanchard and Roberts asked Brooks for the address to which revocation forms could be sent and Brooks provided that address. For these reasons I shall recommend that the allegation of the complaint, paragraph 16, that Brooks coerced an employee into signing a revocation of his union authorization card be dismissed.

B. Promise to Yancey by Brooks

I shall further recommend dismissal of the allegation of the complaint, paragraph 12, that Respondent, by Supervisor Brooks, on or about October 31, promised its employees "increased benefits, such as early paychecks

¹⁰ At one point Blanchard denied that Brooks was present when she and Yancey discussed union authorization cards. Brooks, however, placed Blanchard there when Yancey once spoke of signing a union authorization card. Contrary to the assertion of the Charging Party, this would tend to discredit Blanchard, but not Brooks.

and other favors the Union is unable to do," if its employees ceased engaging in activities on behalf of the Union. This allegation also rests solely on the testimony of Yancey. Yancey testified:

Okay. I went into her [Brooks'] office. I told her—I said, "Jo, I need to get my check early. I got something I need to do." And she said, "Okay, I can get it, but don't make it often." I said, "Okay." Then, she started saying I can get your check early for you and other things that the Union cannot do for you. I said, "I don't know; really?"

Assuming Yancey could be credited, precisely the same remark by a supervisor was held nonviolative in *Omni International Hotel*, 242 NLRB 248, 255 (1979), as it does not constitute a threat, promise of benefit, or other coercive conduct. Moreover, Brooks denied having made such a remark, and I found her to be a far more credible witness than Yancey. For these reasons I shall also recommend that this allegation of the complaint be dismissed.

C. Solicitation of Hayman by Edenfield

Morris Hayman, who was no longer employed by Respondent at the time of the hearing, testified that about 10 days before the election scheduled for December 20 he heard a rumor that employees could obtain revocation forms in the office of Supervisor Frank Edenfield. On direct examination Hayman testified:

I went to Frank Edenfield's office, and there was some cards laying on—some sheets of paper laying on the desk, and I picked one up, looked at it, and signed it and filled it out, and I believe Frank told me to put it up under the calendar.

In testifying Hayman emphasized the words "I believe" quite strongly impressing me that he was speculating rather than testifying as to a memory that he then had. When asked on direct examination if he knew what happened to his form, Hayman testified that Edenfield said he would get it mailed but he did not know what happened to it thereafter. The union counsel acknowledged at the hearing that the Union never received a revocation signed by Hayman.

On cross-examination Hayman was asked and answered:

Q. Okay. And then you gave the form—What did you do with the form once you signed it?

A. I believe Frank Edenfield told me to stick it up under his calendar, and that's what I done. That's the last time I saw it.

Again, Hayman emphasized the words "I believe." He did it so strongly the second time that I had to admonish him to search his memory carefully to determine whether Edenfield had given him any instruction. To my direction Hayman responded: "Well, he would have had to have told me, I would say, to put it under his calendar. Yes he told me." By his words and in his demeanor it

was quite apparent to me that Hayman was engaging in a process of logical deduction as to what Edenfield might have said about a revocation form, and he could not really recall any instruction by Edenfield.

Edenfield denied having anything to do with any revocation form signed by Hayman. He further denied having any revocation forms in his office at any time during the campaign.

I could only speculate as to the source of Hayman's apparent confusion about what Edenfield did or did not tell him to do with any form. I further do not believe that Hayman got the revocation form in Edenfield's office; of the 715 employees in the plants and the 76 employee witnesses called to testify by the General Counsel he was the only one who testified to finding revocation forms in a supervisor's office and, certainly, if any supervisor such as Edenfield kept them openly displayed, another employee would have testified to the fact.

Moreover, since the revocation form, if executed, was never transmitted to the Union as its counsel represents to be the case, Edenfield did everything but assist Hayman in withdrawing from the Union, assuming all testimony of Hayman is credited. That is, if Edenfield lost or destroyed the revocation form, neither Hayman nor any other employee was assisted in effectively executing a revocation form. Finally, I would not find, as the complaint alleges, paragraph 15, that Edenfield solicited Hayman; according to his own testimony it was Hayman who entered the office, grabbed the revocation form and signed it without so much as a word being spoken by Edenfield. That is, again assuming credit to Hayman's testimony, the conduct of Edenfield, in simply maintaining the forms on his desk at some point or another during a long campaign, does not constitute a solicitation without more.

Accordingly, I shall recommend that this allegation of the complaint be dismissed.

D. Interrogation of Goodman by Griffith

Respondent conducted a series of campaign speeches which will be discussed *infra*. The first speech was conducted on December 6 by Plant Manager Case, and a second round of meetings was conducted by Smith and Addis on December 11, 12, and 13. Craig Goodman, who was not employed by Respondent at the time of the hearing, testified that during the campaign he was employed as a weaver under the direct supervision of Griffith. Goodman testified that, a day or two before the December 6 meeting, he went to Griffith's office to present a doctor's excuse for a previous absence, at a time when no one else was present. According to Goodman:

After I showed him the doctor's excuse, then he asked me had I got any mail from the Company, and I asked him what it was about, and he said the Union, and he asked me was I for the Union, and I told him I was, but I had changed my mind, and then he started telling me about somewhere in Allendale or somewhere about the Union—you know—about these bunch of people getting killed and all. . . . Well, he said that we're going to start having these meetings in a couple of days and I

think it'll change. I've seen them before, and I think they'll change a lot of people's mind [sic] about the Union.

Goodman testified that he had regularly worn a union button, but on that particular day was not wearing one. The complaint alleges that Griffith's asking an employee if he was "for" the Union is an interrogation violative of Section 8(a)(1) of the Act.¹¹

Griffith denied questioning Goodman about his union sympathies.¹² However, I found Goodman believable in his testimony that Griffith asked him if he was for the Union. Respondent argues that it is illogical to conclude that Griffith would ask Goodman if he were still for the Union when Griffith had plainly seen Goodman wear union buttons regularly. However, I believe Goodman's testimony on this particular day that he did not wear his union button. It is quite apparent to me that Griffith verbalized a wondering as to whether the failure to wear the union button constituted a change in union sympathy in Goodman. When such wondering is made the subject of a questioning of an employee, it constitutes an interrogation in violation of Section 8(a)(1) of the Act as I so find and conclude. *PPG Industries*, 251 NLRB 1146 (1980).

E. Interrogation of Bush by Cheek

Employee Darryl Bush, who was employed by Respondent at the time of his testimony, testified that between December 1 and 20, the date an election was scheduled, he was approached by his "overseer" Wayne Cheek in the card room where Bush was working. According to Bush:

He asked me that was I against the Union. I mean about the Union, what do I think about the Union. I said: "I'm not against it; I'm not for it." That's all I said. . . . Well, he say I better be ready. I better have my mind made up before the 20th.

Cheek flatly denied ever questioning Bush about his sympathies for the Union. However, despite various minor inconsistencies with Bush's affidavit and between his tes-

¹¹ Goodman testified that between the alleged interrogation and the December 6 meeting he was approached by Griffith who asked him if he wanted to go to the meeting with "nonunion people" and he replied: "No, I wanted to go with the Union people." At that point Goodman was led by the General Counsel to state that the people with whom he attended the first meeting were "all openly for the Union" and that Respondent "segregated the employees to attend these meetings." Goodman further testified he had another exchange with Griffith which would tend to indicate that the employees were segregated by their union sympathies when being scheduled to attend the company campaign meetings. Since Goodman first had to be led to testify that the employees were segregated according to sympathies in scheduling their attendance at Respondent's campaign meetings, and since no other employees testified to such segregation, I would not find that the employer did engage in such segregation. However, since the complaint does not allege such segregation of employees in any way to be a violation of the Act, I need make no specific finding or conclusion on the point. The only allegation of the complaint based on the exchanges between Griffith and Goodman are contained in par. 7 which alleges that Griffith interrogated an employee.

¹² Griffith further credibly denied knowing anything about any segregation of employees according to union sympathies in the campaign meetings.

timony on direct and cross, I found Bush to be completely a credible witness and I find and conclude that he was interrogated about his union sympathies by Cheek at some time between December 1 and 20, 1979, and I conclude that this interrogation violated Section 8(a)(1) of the Act. *PPG Industries*, supra.

F. Interrogation of Parks by Kimbrough

Gwendolyn Parks was employed by Respondent at the time of the hearing as a winder under the supervision of Billy Kimbrough. Parks testified that "a couple of days" before the election scheduled for December 20 she was approached at her winding machine by Kimbrough. According to Parks:

Well, he came up to me—I was working and he come up to me and asked me, he said, "Gwen, have you decided whether or not you was going to vote for the Union?" and I said, "No, I haven't decided."

Parks was asked if anything else was said in this exchange and she replied that there was not. The complaint alleges that this questioning of Parks constitutes an interrogation within Section 8(a)(1).

Kimbrough, who was still employed by Respondent as a supervisor, flatly denied asking Parks if she knew how she was going to vote in the election. Kimbrough further testified that he had been instructed not to ask the employees any questions at all, but he acknowledged on cross-examination that he was also instructed not to initiate any conversations about the Union or the election with employees. He further acknowledged that he did in fact initiate the conversation about the election, telling Parks only that she should be sure and vote, which of course would be contrary to those instructions.

On cross-examination Parks was asked if Kimbrough did not say that she should be sure and vote in the election and Parks replied that she could not remember. I believe, and find, that the only remark made by Kimbrough on that day immediately preceding the election was that Park should be sure and vote. Kimbrough impressed me as a truthful witness, and I do not believe that if he had gone to the trouble of violating his instructions to not ask employees questions and got an answer which would indicate that Parks had not made up her mind, he would have simply dropped the matter there, which would be the effect of Parks' testimony. In summary, I credit Kimbrough's denial that he asked Parks how she was going to vote in the forthcoming election and shall recommend dismissal of this allegation of the complaint.

G. Threats by Case in a Speech

On December 6, in separate groups, Case delivered a 2500-word speech to about 60 employees at Respondent's plant 1. Three separate allegations of the complaint are based on this speech, to wit, a threat of futility of collective bargaining, a threat to reduce benefits, and a threat to deny employees a statutory right to present individual grievances.

Near the beginning of the speech Case states:

... It is not easy to listen to someone tell you how green the grass is on the other side of the fence and not be tempted to try it out. A union can promise you anything, but what you must constantly bear in mind is that there is no legal way for you to enforce union promises. The NLRB call such promises "sales talk" and says that employees ought to know this. A union can only ask a company to do something, but [it] is the company that decides whether or not to do it.

Then Case proceeds to the topic of exclusive representation:

When a union wins an election, it becomes the bargaining representative of all the employees in the voting unit. If there are 500 votes, and 251 vote for the union and 249 vote against the union, the union becomes the bargaining representative for all 500 employees—including the 249 who didn't want the union.

Once the union becomes the representative of the employees, it becomes the "exclusive spokesman" for the employees. Employees can no longer stand on their own two feet and speak for themselves, even if they want to. If you have a complaint in a union plant, you have to take it through the union. So don't think you can vote a union in with the idea of not signing up to pay dues after the election. That's an old trick. Unions don't give anyone free service. They don't believe in "free riders." If you don't pay your dues, no one will speak for you. Look around the plant and try to figure out who the union stewards would be. You know who they would be—they would be the employees who are pushing the union the hardest. They are the ones who would put the union's interest first—above the interest of anyone else. Ask yourself: would you want one of these employees to decide whether your grievance would be taken to the company? Would you want to hand over your right to speak for yourself to one of these employees?

The speech then goes into the topic of the duty to bargain:

How Would a Union Affect Your Wages, Benefits and Working Conditions?

The law says that if a union is the elected representative of employees, the company and the union must negotiate "in good faith" in an attempt to reach a contract. But the law makes it clear that the company is not required to make any concessions or give in on any points. Let's take a quick look at what the NLRB and the courts have said about this.

At that point a slide is shown quoting or paraphrasing language from the following cases: *Midwestern Instruments, Inc.*, 133 NLRB 1132 (1961); *Oxford Pickles*, 190 NLRB 109 (1971); *Automation & Measurement Div. v. NLRB*, 400 F.2d 141 (6th Cir. 1968). Each of these cases indicates that in a course of good-faith bargaining em-

employees may lose, as well as gain, in certain areas of their emoluments of employment. The presentation by Case continues:

So, it's easy to see that voting for a union does not—guarantee that your wages, benefits, or working conditions will be better than they are today;—in fact, there is no guarantee that through good faith bargaining your wages, benefits and working conditions will even remain the same as they are today. When you sit down to negotiate with a union, you start off with a blank piece of paper and you don't write anything down on the paper until both parties agree.

Then the speech goes to the topic of strikes:

What Would Happen if the Parties Couldn't Reach an Agreement?

If the parties cannot agree on the terms of a contract, the union is free to call a strike

The speech then goes into a depiction of the effects of strikes in general and strikes by the Charging Party in particular.

Then the speech discusses several topics of collective bargaining. The Charging Party stresses references to insurance and pensions included in Case's speech:

The union has been very critical of the pension plan. They claim that you would have a better pension plan if the union represented you. They have even told some employees that they would guarantee you at least \$100 per month in pension benefits. That's a joke. The truth of the matter is that this union has a deplorable record as far as pension plans are concerned. Here is a copy of the union's contract at Canton Textile Mills. The word "pension" is not even mentioned in this contract. And here are five other contracts negotiated by this same union—and none of them say anything about pensions. But let's look closer to home. Let's look at Roanoke Rapids. The union has represented Roanoke Rapids employees of J. P. Stevens for over five years now. Yet those employees have never received pension benefits any better than you have. The union may promise to get you a better pension—but the record shows that this union can't help you on pensions.

Then Case proceeded immediately to the topic of insurance stating:

Looking even closer to home, at Roanoke Rapids the union agreed to the same insurance you have. Ask yourself: How can a union organizer promise you that the union will get you better insurance than you have now and require the company to pay for all dependent coverage, when the union agreed to the same plan you have at Roanoke Rapids? You would have to be pretty naive to think that the union is going to get you something it hasn't been

able to get Roanoke Rapids employees in over five years of negotiating.

Conclusions on Case's Speech

1. Threat of futility

The complaint, paragraph 8, alleges that in the December 6 speech Case:

Threatened [Respondent's] employees that it would be futile to engage in activities on behalf of the union by telling [Respondent's] employees there was no legal way the union could enforce its promises because Respondent decided whether or not to carry out promises.

In arguing that Case's December 6 remarks constitute unlawful threats of futility of collective bargaining, especially regarding bargaining about insurance and pensions, the Charging Party cites *T. V. Systems*, 206 NLRB 841 (1973), and *Bancroft Mfg. Co.*, 189 NLRB 619 (1971). These cases are representative of those in which the Board has found violative suggestions that it would be futile for employees to engage in organizational efforts or attempts to benefit by collective bargaining. In *T. V. Systems* the remarks were made in the context of a discharge of the entire unit and other unfair labor practices; in *Bancroft* the questioned statement contained no expressed acknowledgement of a duty to bargain in good faith, and warned that disagreements at the bargaining table could be overcome *only* by a strike. Here the remark is not made in a context of other unfair labor practices¹³ and there is no expressed or implied threat that the employees would be required to strike to force Respondent to bargain in good faith. Absent either of these factors a suggestion that bargaining may be unsuccessful is not tantamount to a threat of futility under the Act. See *Visador Co.*, 245 NLRB 508 (1979). Rather, unattended by threats or other unfair labor practices the speech by Case falls within the authorities wherein it has been held that questioned remarks are "merely an expression of opinion of the type clearly permissible under the statute." *Blue Cross*, 219 NLRB 1 (1975). See also *Starkville, Inc.*, 219 NLRB 595, 599-600 (1975), where the same theme was followed by using comparisons of the benefits of the employees who were unrepresented against those of the employees of other plants which were represented by the union involved.¹⁴

Accordingly, I shall recommend that this allegation of the complaint be dismissed.

2. Threat of loss of benefits

The complaint, paragraph 11, alleges that in his speech Case: "Threatened [Respondent's] employees with loss of

¹³ Only one unfair labor practice clearly occurred before the date of Case's speech. This was the isolated interrogation of Goodman by Griffith a "day or two" before December 6, according to Goodman.

¹⁴ And see also *Mt. Ida Footwear Co.*, 217 NLRB 1011, 1014 (1975), where the employer stated that he was willing to give as much without a union as he would with a union. The Board held: "In our opinion this statement falls within permissible campaigning."

benefits they now enjoyed if they engaged in activities on behalf of the Union."

In several different cases the Board has held that "bargaining from scratch" statements constitute a threat. This is where the remark can be reasonably construed to imply that the employer will unilaterally discontinue existing benefits and what the employees may ultimately receive depends in large measure upon what a union can induce the employer to restore at the bargaining table. See *Plastronics, Inc.*, 233 NLRB 155 (1977). In this case there is no express, or implied, threat that the employer would unilaterally reduce any benefits; there is an express reference to the duty of good-faith bargaining; and there is no hint that the employees will ultimately be left with what portion of their present benefits the union could recapture for them.

In this posture there is no element of interference, restraint, or coercion in the quoted text, and I shall recommend that this allegation of the complaint be dismissed.

3. Threat to deny statutory rights

The complaint, paragraph 10, alleges that, in violation of Section 8(a)(1), on or about December 6 Case "threatened [Respondent's] employees with loss of their right to individually talk with management about grievances if they selected the Union as their collective-bargaining representative" The "right" referred to is contained in the provisos of Section 9(a) of the Act.¹⁵

In *TRW-United Greenfield Div.*, 245 NLRB 1135, 1142 (1979), similar employer remarks were held nonviolative. The statement of the employer there was contained in a letter to the employees which stated:

"The United Auto Workers want to get in our plant and take money from your paychecks through union dues, fines, fees and assessments. At the same time this would take away all of your individual rights to speak for yourselves in matters relating to your job."

Although that employer was more simplistic, there is no essential distinction in the effect of the words used by Respondent herein. The administrative law judge's decision, which the Board adopted without comment on this point (245 NLRB at 1143), reasoned:

In a strictly technical sense the Section 9(a) proviso permits an employee represented by a union to present his grievance to management without intervention by the Union. However, any adjustment of such grievance cannot be contrary to the collective-

bargaining agreement, and union officials must be afforded the opportunity to be present to insure compliance with the agreement. Thus, employees presenting such grievances are severely limited in any adjustment of the grievance they may negotiate contrary to unrepresented employees who are limited in the adjustment of such grievances only by their ability to negotiate. An elementary concept of collective bargaining is that employees do surrender many individual rights to "deal" with management which they formerly possessed in return for the advantages inherent in their collective strength and the security of a collective-bargaining agreement. In my view, the statements of the employer here merely conveyed to the employees that if they should choose collective representation they would no longer be free to seek individual adjustments of grievances, as in the past, because of the restraints on such adjustments imposed by any collective-bargaining agreement.

In so stating, the administrative law judge, and therefore the Board, apparently followed *Federal Mogul Corp. v. NLRB*, 566 F.2d 1245 (5th Cir. 1978). In that case the Fifth Circuit held that under Section 9(a) of the Act the right to present grievances individually is a statutory employee right, not a company benefit, so that a company cannot effectively threaten to take it away.¹⁶

I am, of course, bound by the Decision of the Board in *TRW-United Greenfield Div.*, supra, and, accordingly, I conclude that by its statement regarding ability of employees to present individual grievances, Respondent did not violate Section 8(a)(1) of the Act and shall recommend dismissal of this allegation of the complaint.

H. Threats by Smith and Addis in a Speech and Slide Presentation

On December 11, 12, and 13, Plant Manager Billy Smith and Employee Relations Vice President Harold E. Addis jointly conducted group meetings with all of Respondent's Tifton employees. Smith opened the sessions with one prepared speech; his speech was followed by a slide presentation with a prerecorded audio text; and the

¹⁶ If it is a "right" vested in the employee by the statute, it is certainly an empty one. There is no corresponding obligation on the part of the employer to deal fairly, or bargain in good faith, with the grieving individual employee. Indeed, there is no statutory protection for the employee should the employer decide to fire him for the presentation of a purely individual grievance. Although phrased in terms of an employee right, the proviso of Sec. 9(a) appears to be actually an employer privilege the effect of which is to insulate the employer from charges of individual bargaining under Sec. 8(a)(5) should it listen to an employee grievance, and/or should it adjust that grievance, as long as the union is allowed an opportunity to insure that the adjustment is not inconsistent with an extant collective-bargaining agreement. This privilege, like any privilege, is one an employer can invoke or not, as it wishes. Therefore, it would seem to me that when an employer tells employees that if they select a union as their collective-bargaining representative they will no longer be heard individually, it is telling them that it would not invoke the insulation against Sec. 8(a)(5) charges which is contained in Sec. 9(a), and would not entertain their individual grievances. When individual grievances had theretofore been entertained, such announcement would therefore seem to constitute a threat.

¹⁵ Sec. 9(a) of the Act states:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective-bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

"slide show" was followed by a prepared presentation by Addis concerning changes in Respondent's pension plan.

The complaint paragraph 9 alleges that in the Smith speeches and slide show Respondent: "threatened its employees that it would be futile for its employees to select the Union as their collective-bargaining representative and that Respondent would retaliate by dealing with its Tifton plant employees as it had with its employees at its Roanoke Rapids, N. C., plant." The complaint paragraph 14 further alleges that in the presentation by Addis Respondent "threatened its employees it would withhold scheduled increased pension benefits from its employees if they joined or engaged in activities on behalf of the Union." The General Counsel submitted no brief; therefore I do not know the precise theory of these allegations. I can only assume that the allegation rests on the speeches taken as a whole. Respondent contends that the words of the presentation fell within the ambit of the "free speech" proviso of Section 8(c) of the Act.¹⁷

Smith's speech, consisting of about 1000 words, begins with a statement that the purpose of the meeting is "to discuss additional important information about the Union and the election next week." He introduces Addis as the person in "overall charge of personnel matters for the whole company." The second paragraph of the speech states that Smith will begin by showing the employees a film after which Addis and he would answer any questions. In the third paragraph Smith states that the Union:

... is beginning to put on more pressure than ever. They want the ¹⁸ employees of this plant as dues paying union members very badly. That's why they have flooded Tifton with so many union organizers And for that reason, these organizers are willing to do or say just about anything to get your vote.

Respondent placed in evidence handbills and other material distributed by the Union before the date of the speech. It contends that much of what the slide presentation Smith's and Addis' presentations were in reply to these handbills.

Paragraph 4 of Smith's speech states that the employees should give careful consideration to the issue before them and adds: "If the union gets into this plant, you are going to have to live with it from now on—no matter how miserable the union may make your life."

Paragraph 5 tells the employees to decide what is best for them, and adds:

Don't worry about J. P. Stevens. We will run our plants and weave our wool (produce our yarn) regardless of the union. We have battled this union since 1963. And we will battle it for the next 16 years if necessary, and we will do it completely

within the law. This union has not hurt Stevens, and it's not going to. We know this union for what it is—and what it is is a "weak sister," as far as I'm concerned. So, don't worry about Stevens—worry about what is best for you and those who depend on you. Would this union help—or hurt—you? If you will look closely at the union's track record, I think the answer will become very clear.

Paragraph 6 of Smith's speech tells the employees not to make their decision on the basis of the "personality" of anyone involved. It continues:

No union is going to change that either. No union organizer or union steward is ever going to give any orders to any supervisor in this plant. You can be absolutely certain of that. The company is always going to make the final decisions on all matters relating to this plant.

Paragraph 7 of Smith's speech states that there are 3000 represented and 37,000 unrepresented employees who "speak for themselves." It continues:

You should ask yourself:

1. Which group of Stevens employees have the best deal—the union employees or the non-union employees?
2. Which group of employees in Stevens gets paid higher wages—the union employees or the non-union employees?
3. Which group does better as far as pensions are concerned? And other benefits?
4. Which group has better job security?
5. Which group has a better seniority system?

These are all fair questions, aren't they? Of course they are. They are the *important* questions. Wages, benefits, job security and promotional opportunities are what this election is about. And if one group of Stevens employees has a better deal than the other, then that's the group you ought to want to be a part of. [Emphasis in original.]

Paragraphs 8 and 9 state that this comparison is what the slide program of the day is about and state that Addis will have a statement to read at the conclusion thereof and that Smith and Addis will take their questions after the program.

Then begins the slide show. The original slides had been destroyed by the producer before the hearing herein. By stipulation the parties attempted to reconstruct what slides they could. Some of the slides were available in photograph forms which were received in evidence. Also, some slides were essentially duplicated by presentation of newspaper articles which were made the subject of the slides and handbills which were also made the subject of some slides. Some newspaper articles were used in the slide presentation but were not recovered by the parties. The exact point at which each slide was shown is also not ascertainable; however, the parties were able to stipulate that slides were shown during the presentation of page 1 or 2, etc., of the transcript of the recorded presentation. Most of these slides just state the

¹⁷ Sec. 8(c) provides:

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

¹⁸ The blank in the speech was not explained; presumably it refers to the number of employees in the plant.

topic of the paragraphs of the text and add little or nothing to the presentation; the Union in its brief only refers to the transcript of the presentation as the words which make out a violation. Therefore, I will not describe the slides which were used at different passages in the presentation.

The transcript of the presentation is a document of about 4000 words. The first three full paragraphs state that the presentation has been prepared by Smith and other members of local management, that employees should feel encouraged to ask questions, and that "the issue to be decided in the election is: What is best for you—union or union free [?]." The employees are then assured that they will vote by secret ballot.

Paragraph 4 states that there are no guarantees of what the employees will "end up with" through the process of collective bargaining and:

The law only says that the company and the union must negotiate in good faith, but neither side is required to budge on any of its positions. How long the negotiations will last—and whether an agreement will ever be reached on all the terms of the contract—is anyone's guess.

The paragraph continues that if there is a deadlock the Company can put into effect its last offer, "whether that offer happens to be better or worse than what the employees had before" and that the Union is then free to call the employees on a strike.

Paragraph 5 of the speech states that it is impossible to predict the outcome of "good faith negotiations" and that just because the Union achieved or failed to achieve objectives at the plants of other employers "doesn't necessarily mean that Stevens would do the same thing." The other employers named were "Cone Mills or Lowenstein or Fieldcrest."

Paragraph 6 of the speech states that the Union had won an election at Respondent's Roanoke Rapids, North Carolina plant and thereafter the Union initiated a boycott which "was to 'wipe out' J. P. Stevens." The speech states the objective of the boycott was that: "Stevens would be brought to its knees like Farah Manufacturing was a few years before."

Paragraph 7 states that the Union won an election at the hundred-employee High Point, North Carolina plant but the results were still being contested. The paragraph also mentions an election at which the Union won a "three vote margin" at Respondent's Allendale, South Carolina plant.

Paragraph 8 states that the ultimate outcomes at High Point and Allendale have little to do with the employees at Tifton because as the union announced shortly after the High Point election, "even if the union finally wins there, those employees will simply be joined to the workers in Roanoke Rapids in negotiations. It is Roanoke Rapids that has been, and will continue to be, the central focus of this union's attention."

Paragraph 9 states that the employees should therefore look to see if, had they been represented by the Union at the same time that the Roanoke Rapids employees had been represented: "How would things have stacked up

for you in comparison to how you have done without a union?"

Paragraphs 10 and 11 of the speech, upon which the Charging Party heavily relies in regard to its contentions herein, state in full:

First of all, it must be remembered that after more than five years the parties have still not been able to reach an agreement at Roanoke Rapids, and negotiations are still dragging on. There have been certain legal proceedings which have to do with the early years of contract bargaining. Those proceedings are still hung up in the court, and the company is confident that it will ultimately succeed in that case, since it has always negotiated in complete good faith at Roanoke Rapids. However, only time will tell whether the company is correct in this belief. In any event, the legal proceedings only deal with the negotiations from the late 1974 through late 1976, and there are no lawsuits which bring into question the company's good faith in contract negotiations in more recent years. In fact, on several occasions the NLRB has ruled that the company has bargained legally on various items since 1976.

Let's first look at some of the things the union organizers have said about Roanoke Rapids. One of the things they said was that Roanoke Rapids employees don't have to pay union dues yet. But in saying this, the union organizers seem to be trying to lead you to believe that the union has not cost Roanoke Rapids employees anything. As we shall see shortly, this is not true. Roanoke Rapids employees have paid a high price for letting some union leaders in New York take control of their working lives.

Paragraph 12 refers to a union claim that a grievance procedure negotiated at Roanoke Rapids has "done a lot of good." The text calls this claim a joke and states that the grievance procedure provided no job security for the employees in that there are 700 fewer employees than when the Union was certified at Roanoke Rapids and at that plant "239 employees [had been] discharged for cause," and the Union has gotten none of their jobs back.

Paragraph 13 begins:

Another thing the union organizers have said is that at Roanoke Rapids "We've got it all." So let's look at what the employees at Roanoke Rapids do, and do not, have.

The text then compares wage differentials showing that the average annual wage at Respondent's Tifton plant is greater by \$734.40, based on a 40-hour week, and adds, "That, in itself, is a high price to pay for union representation." Then the text compares certain specific wage rates for specific jobs noting that employees earn as much as 51 cents per hour less at Roanoke Rapids than at Tifton.

Paragraph 14 discusses the issue of wage increases. It states that Tifton employees had received a 10-percent wage increase during the year but the Roanoke Rapids

employees had received none. It points out that at Roanoke Rapids Respondent had offered them an 8-1/2-percent increase "if and when the contract was ever agreed upon" and that their proposed increase "would not be granted retroactively." The paragraph concludes that the Union rejected the offer "out of hand" and that the Union admitted that it had called a meeting to vote on the issue but not enough people had attended.

Paragraph 15 states that the only reason the employees are not getting their wage increase is that the Union will not agree to a contract because it would then have to give up its national boycott against Stevens and concludes: "... there has been no general wage increase at Roanoke Rapids this year—because the union leaders in New York said there would not be."

Paragraph 16 begins: "Let's look for a moment at where you would be if you had been joined with the Roanoke Rapids employees, like the union wants you to be. Fixers at Tifton would still be paid \$5.28 per hour." Then are listed 12 other job classifications and their wage rates the employees would still be receiving. The paragraph concludes: "This is why we said earlier that even though Roanoke Rapids employees have paid no union dues yet, the tactics of this union have cost them money—and plenty of it."

Paragraph 17 begins: "If this union had done to you the same thing it did to Roanoke Rapids employees, the wage loss you would have already suffered would be staggering." The paragraph continues that on the average the employees would have lost \$368.40 in wages and would continue to lose at the rate of \$16.80 per week in the weeks ahead because: "... this union continues to refuse to get down to business at the bargaining table at Roanoke Rapids." The paragraph concludes: "These wages would have been lost forever, because it didn't suit the union leaders in New York to give up on their national boycott and agree to the terms of a fairly negotiated contract."

Paragraph 18 begins: "But so much for wages. What about fringe benefits? What has the union done for Roanoke Rapids employees? The answer is absolutely nothing." The remainder of the paragraph then lists the following fringe benefits stating after each that they are identical to what the employees have at Tifton: vacations and vacation pay, funeral leave policy, jury duty supplement, educational assistance, overtime premiums and a Christmas gift program, life insurance, accidental death and dismemberment insurance, and hospitalization. The paragraph concludes: "These benefits are the same ones you are guaranteed in the group insurance booklet you were provided some time ago."

Paragraph 19 states that the pension plan at Roanoke Rapids and Tifton is the same and that the Union has been told that no improvements in the pension at Roanoke Rapids will be placed into effect, even though improvements are made at unrepresented plants, "unless and until the union leaders in New York sign a complete contract—which they refuse to do."

Paragraph 20 states that: "When the union says 'we've got it all' at Roanoke Rapids, you've got to wonder who they think they're kidding." The paragraph continues:

The sad fact of Roanoke Rapids is that the union has hurt the employees at that location, despite the fact that the company has been pressuring the union to go to the bargaining table and get a reasonable agreement.

The text continues that Respondent has an "open mind at Roanoke Rapids. It does not want to penalize the workers at Roanoke Rapids." The text continues on to blame the Union in the entirety for the failure to reach agreement at Roanoke Rapids.

Paragraph 21 states that Respondent is refusing to agree to arbitration at Roanoke Rapids, but the primary dispute between the parties is checkoff. The text states that Respondent would agree to checkoff if the employees could revoke their authorization at any time but the Union is refusing to agree to that.

Paragraph 22 states that the Union is being unreasonable in its position on seniority provisions at Roanoke Rapids and: "... there is still no job bidding procedure at Roanoke Rapids."

Paragraph 23 states in full:

The truth is that having this union act as negotiator has hurt Roanoke Rapids employees. It has cost them—and continues to cost them—thousands of dollars in lost wages. It has denied them the opportunity to gain promotions to better paying jobs by refusing to agree to a plantwide seniority system and a fair bidding procedure. And it has placed Roanoke Rapids employees in the position where they cannot hope for improvements in their pension plan or other fringe benefits—because to do so would require the union to put the employees' interest ahead of the union's interest by agreeing to a complete contract and giving up on its boycott. And this the union will not do.

Paragraph 24 states that in its handbills the Union is claiming things have gotten better for the employees at Roanoke Rapids since the Union has been selected as the collective-bargaining agent. "And that is one of the most vicious lies this union has ever told any Stevens employee." The paragraph states that employees had petitioned to get rid of the Union at Roanoke Rapids but the petitions had been dismissed by the NLRB; it further claims that the Union actually does not continue to represent a majority of the employees at Roanoke Rapids.

Paragraph 25 follows: "Once a union gets its claws into you, it doesn't let go. Roanoke Rapids is living proof of that."

Paragraph 26 calls the Union a "do nothing" union and continues: "Its organizers talk about all the great things they are going to do, but the fact remains that this union's promises never come true. The only thing that comes true with this union is that it costs you money." The paragraph refers to jobs that have been lost at Farrah Manufacturing and at Roanoke Rapids and concludes: "The employees suffer, because what is important to the union is not what is important to the employees."

Paragraphs 27, 28, and 29 quote persons directly or tangentially involved in the Roanoke Rapids organiza-

tional efforts. Each of these persons indicates that the effort has done the employees no good.

Paragraph 30 states that the issue before the employees is whether they want to be joined with the Roanoke Rapids employees in having the Union be their representative and:

Do you want to place your future in the hands of some New York union leaders who are almost insanely preoccupied with "wiping out" the company you work for?

The text continues that if the Union wins it will be hard to decertify the Union but if the employees vote "no" they can: "... give Billy Smith and Bob Case and yourself a fair chance to make Tifton a better place to work."

Paragraph 31, the final paragraph of the text, states that if the Union is rejected it would end dissension among the employees: "But if a majority of the employees in this plant vote for the union, the union story will only have begun."

At the conclusion of the slide presentation Addis gave his speech. Its text in the entirety is as follows:

Before we take any questions, I would like to read a brief statement.

Recently, the union distributed a leaflet here which talked about certain proposals the company has made in the Roanoke Rapids negotiations relating to improvements in the pension plan. As a result, numerous employees have approached their supervisors about the company's intention to amend the pension plan. I regret that the union has seen fit to inject this issue into the Tifton campaign, but now that it has I feel compelled to set the record straight.

Several weeks ago the company posted notices at nonunion plants telling the employees that the company was going to make certain changes in the hourly pension plan. The employees at those plants will be provided with the details of those changes. The company has offered these changes to Roanoke Rapids employees if and when the union agrees to all the terms of a complete collective bargaining agreement. In other words, the company has offered the union the same conditions on pension changes it offered them on wages this year. Under the company's offer employees at Roanoke Rapids will not receive the pension changes unless and until a complete contract is signed. Frankly, we are not optimistic that the union's bargaining strategy at Roanoke Rapids will change, but the offer has been made by the company in good faith.

The bottom line is that if the union gets in here at Tifton, the company will negotiate with the union about pensions. If the union is voted out at Tifton, the company will be free to deal with you directly.

The floor is open for questions. I don't have anything to hide. Stevens doesn't have anything to hide. We will either give you a truthful answer to your question, or we will get you one. The only exception is: this company cannot legally talk to you

about any future plans of the company for Tifton. We cannot make any promises.

Conclusions on Smith-Addis Presentation

As noted the General Counsel did not submit a brief. The Charging Party's brief, pages 74 and 75, advances the following theory of a violation regarding Smith's speech and the slide presentation:

Respondent's conduct in using the denial of the Roanoke Rapids wage increase to chill union activity in Tifton is comparable to that found in *Textile Workers Union of America v. Darlington Mfg. Co.*, 380 U.S. 263 (1965). In *Darlington*, the Court held that the employer was privileged to close the plant following the union election victory. The Supreme Court went on to hold, however, that if the *Darlington* plant closing was thereafter used by the parent company to chill union activity in other non-union facilities, with the contemplation that the plant closing would foreseeably have such effect, the chilling in the other plants made the closing of the *Darlington* plant illegal.

Similarly, in the case of Roanoke Rapids the Board refused to issue a complaint when Stevens adopted the bargaining tactic of withholding the annual wage increase. However, once Stevens used its withholding of the wage increase at Roanoke Rapids to chill union activity at Tifton, another location in its multi-plant operation, the reasoning of the Court in *Darlington* compels the conclusion that both the denial of the wage increase in Roanoke Rapids and the subsequent publication of this action in order to chill unionism at Tifton were illegal.

In sum, the use of the withheld wage increase in Roanoke Rapids to chill union activity in Tifton constitutes a pervasive 8(a)(1) violation in Tifton.

Although no analysis is expressed regarding the alleged threat by Addis to withhold pensions unlawfully, the Charging Party's argument would presumably be the same on that issue.

Of course, the legality of the withholding of wage increases at Roanoke Rapids is not an issue before me. But, as the Charging Party's brief acknowledges, no complaint has issued on withholding of wage increases in Roanoke Rapids and it must necessarily be assumed that Respondent's action in so doing was lawful. There is no case authority for extending *Darlington* as the Charging Party would do, and generally a "threat" to do a legal act is protected.¹⁹

The Smith-Addis presentation, taken as a whole, states that collective bargaining has been futile for the Roanoke Rapids employees and strongly implies that the employees at Tifton would achieve the same result if they selected the Union as their collective-bargaining representative. There is further a plain implication that Respondent would withhold pension benefits at Tifton in the

¹⁹ The exception, of course, is that a threat to close a plant because of union activity is unlawful even if there could be no intent to chill organizational attempts elsewhere were the threat to be carried out.

same manner that it had withheld pension benefits and wages at Roanoke Rapids. But the presentation does not state anywhere that the cause of the futility, and the implied wage and pension withholdings, would be because of action of Respondent; in fact, it says that Respondent will engage in only lawful tactics at the bargaining table.

The source of past futility at Roanoke Rapids and implied future futility at Tifton is depicted to be the inane intransigence of the Union. Respondent is telling the employees that the Union's real objective is to destroy, by boycott, their employer. Whether any employee would believe that is, at least, problematical. But whether it is true or not, and whether the employees would believe it or not, does not determine legality. There is no threat that Respondent would do anything unlawful; there is only an implication that it would employ the technique of withholding wage, retirement, and other benefits until a complete agreement is reached. Since this technique is lawful, the presentation is protected by Section 8(c) of the Act as I so find and conclude. Accordingly, I shall recommend that paragraphs 9 and 14 of the complaint be dismissed.²⁰

I. Threat by Johnston in a Speech

On December 18, Company Vice President Donald Johnston made a speech to approximately 420 of the employees of the two plants in three separate meetings. The complaint paragraphs 10 and 13 allege that in these meetings Johnston threatened Respondent's employees "with a loss of their right to individually talk to management about grievances if they selected the Union as their collective-bargaining representative . . ." and further that Johnston "promised [Respondent's] employees increased benefits if the employees rejected the Union as their collective bargaining representative."

Johnston's speech is approximately 2000 words long. Near the beginning of the speech Johnston states that:

No matter what these union organizers are telling you, voting this union in would be giving the union the right to be your *exclusive spokesman*. You would no longer be in a position to represent and speak for yourself, and the representation you would really be committing yourself to is not representation by the union organizers who have been coming into your homes so much lately. These people will be gone after the election. Your real representation will be by union stewards . . ."

As stated above in the analysis of the speech by Bob Case, this comment is protected under Section 8(c) of the Act. *TRW-United Greenfield Div.*, supra. Accordingly, I shall recommend dismissal of this allegation of the complaint.

The allegation that promises of benefits were made during the speech by Johnston apparently relate to the following passages found near the end of Johnston's speech:

In conclusion, let me make another important point. This company is not going to forget Tifton after the election. J. P. Stevens—and I personally—have a commitment to the people working in this plant. And we intend to carry out that commitment. This company is proud of the employees at the Tifton plants. We plan to do the best job we can to satisfy your needs and to make you secure in your jobs.

. . . .

Just this final word. These organizers have come from all over the country. Most of them you had never seen until a few years ago. After the election is over, you may never see them again. On the other hand, your local management lives in this area; they take part in this community and they are responsible to you and this community.

Obviously, there is no express promise in these passages and no implied promise of benefits should the employees reject the Union can be defined. Accordingly, I shall also recommend that this allegation of the complaint be dismissed.

J. Threat in a Circular and Notice to Deny a Statutory Right to Reinstatement to Economic Strikers

Employee Linda M. Marchant testified that on December 12 Supervisor Edwina Walker distributed to her a three-page circular dated "12-11-79," which has the introductory sentence: "Listed below are answers to the questions most frequently asked last week in our meetings." Then follows 11 numbered questions and answers, the second of which is:

Q. If the Union is voted in and calls a strike over wages, benefits or working conditions, can I lose my job if I do not come to work?

A. Yes. If the company closes down during a strike, there will be no work available for anyone. If the company chooses to operate this plant in the event of a strike, the company will permanently replace these employees who do not report for work. If you have been permanently replaced, you will not get your job back when the strike ends.

The parties stipulated that on December 13 Respondent posted the following notice on its employee bulletin board:

STRIKERS

- 1 LOSE THEIR WAGES.
- 2 CANNOT COLLECT UNEMPLOYMENT COMPENSATION.
- 3 CAN BE PERMANENTLY REPLACED IN STRIKES OVER UNION ECONOMIC DEMANDS.
- 4 DO NOT HAVE A RIGHT TO THEIR JOB AFTER THE STRIKE IF PERMANENTLY REPLACED.

²⁰ *Airstream, Div. of Beatrice Food Co.*, 192 NLRB 868 (1971); *Mercy-Memorial Hospital Corp.*, 231 NLRB 1108, 1121-22 (1977).

The complaint paragraph 18 alleges that by the circular and notice Respondent "threatened its employees that they would be permanently replaced during an economic strike and those employees who had been permanently replaced would have no right to their jobs after the strike."

Plant Manager Billy Smith testified that on December 17 the following notice was posted on the bulletin boards of both plants:

Q. If the ACTWU calls me out on an economic strike, can I lose my job?

A. Yes. If the ACTWU calls you out on an economic strike, *you cannot be fired for striking but you can be permanently replaced*. The company has a legal right to operate the plant during a strike by hiring permanent replacements for striking workers. When the strike is over, the company has no legal obligation to discharge those employees hired to fill those jobs left vacant by strikers. At the end of the strike, you cannot get your job back from your permanent replacement if he is still working. [Emphasis in original.]

Since employees have a right to be reinstated upon departure of permanent replacements²¹ the circular distributed on December 12 and notice posted on December 13 contained misstatements of the employees' Section 7 rights. Such misstatements have a coercive impact on employee participation in protected concerted activity and constitute an impermissible threat to the right of employees to engage in protected concerted activity. *Piezo Technology, Inc.*, 253 NLRB 900 (1980). Therefore a violation of Section 8(a)(1) must be found unless Respondent's notice posted December 17 constitutes an effective repudiation of the statements of December 12 and 13, as Respondent contends. I find that it does not. The notice of December 17 does not expressly disavow the content of the prior notices. Moreover, the underscoring in the December 17 notice of the words "but you can be permanently replaced" seems to reemphasize the inexorable impact of the prior notices. Finally, the only disavowal, if there can be said to be one, is one only made implicitly in the December 17 notice. The qualifier "if he is still working" puts the burden on the reading employee to figure out that if the permanent replacement is *not* still working an economic striker could get his job back. Requiring this deductive process is hardly a repudiation of the prior explicit statement that the employees could forever lose their jobs simply because they engage in an economic strike.

Accordingly, I find that, in the question and answer circular issued December 12 and the notice posted December 13, Respondent violated Section 8(a)(1) of the Act by misstating the employees' rights of continued employment should they engage in an economic strike.

As amended at trial, the complaint alleges that employees were threatened with loss of benefits by the following question and answer contained in the circular dis-

tributed to employee Marchant on December 12. The question and answer on which this allegation is based is:

Q. Since there is no contract at Roanoke Rapids, has this union cost those employees anything?

A. Yes. Since July 1979, each employee has lost an average of more than \$57 a month and will continue to do so until a contract is signed.

The Union does not contest the figures contained in the answer to this posed question. Respondent has not been found guilty of an unfair labor practice by withholding wages or wage increases from the employees at Roanoke Rapids; therefore, the response must be taken as protected argument. As such, Respondent cannot be said to have violated Section 8(a)(1) of the Act by making the statement; accordingly, I shall recommend dismissal of this allegation of the complaint.

K. Threat by McDaniel to Jackson

The complaint paragraph 19 alleges that on or about December 13 McDaniel threatened employees that "Respondent would close the plants if the employees joined or engaged in activities on behalf of the Union."

In support of this contention the General Counsel presented the testimony of employee Robert Lee Jackson who is a dryer operator at plant 2. In December, Jackson reported immediately to Shift Supervisor Russell Rentz who, in turn, reported to Department Manager Thomas McDaniel. Jackson testified that a week before the election (which had been scheduled for December 20) he approached McDaniel and employee Frank Nixon who were seated at a smoking bench. A conversation between Nixon and McDaniel was ongoing at the time Jackson approached them. On direct examination Jackson was asked what portion of the conversation he heard and Jackson testified:

Mr. McDaniel told Frank Nixon that . . . the Union could not compare J. P. Stevens with the Steelworkers Union, because if they did, Stevens would have to close down. He said that if Frank Nixon went downtown and bought a pair of pants or a shirt, he wouldn't pay any more than 12—\$10 or \$12 for a suit, a pair of pants or a shirt, and if he went out to Sears and bought a steel belted tire, that he would pay \$100 or more for a tire, and if Stevens had to pay that kind of money, they would have to go out of business.

On cross-examination Jackson testified that he could not remember McDaniel saying anything about going out of business and could only recall his saying that Respondent "would have to close down." Jackson further acknowledged on cross-examination that, the night before McDaniel's comment was made to Nixon, the Union had distributed handbills which were about "Firestone and the Steelworkers," but he could not remember what was on the handbill other than to say that it was "something like" a comparison of wage rates at Firestone, and the wage rates of employees who work for J. P. Stevens in Tifton.

²¹ See *Laidlaw Corp.*, 171 NLRB 1366 (1968), enf'd. 414 F.2d 979 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970), for a full discussion of the employment rights of economic strikers.

McDaniel testified that he did have a conversation with Nixon on the topic of comparative wages, but could not recall that Jackson was present. According to McDaniel:

We were talking about the handout that the Union had given on wages, comparing our wages with other industries, like steel, auto and rubber. And I was saying that I thought it was a little misleading; that if he had to pay that kind of wage that people couldn't buy our clothes. And Frank says, yeah, you're right. And that was the extent of it.

Nixon was called by Respondent but testified that he could not remember any conversation touching on wage rates or wage comparisons. He testified that he was sure that McDaniel never threatened that Respondent would go out of business.

Nixon was too eager to testify that McDaniel had never stated to him that Respondent might go out of business and I find him totally incredible in his statement that he could remember no conversation at all about wage rates. However, this does not help resolve the issue. I found Jackson the more credible witness than McDaniel. The fact that he could recall on cross-examination the "going out of business" statement that he had made on direct examination does not vitiate his credibility. I find, as Jackson testified on cross-examination, that McDaniel stated that if Respondent had to pay wages equivalent to steelworkers or rubber workers in the area Respondent "have to close down."

It is undisputed that McDaniel's remark was made in response to a leaflet produced by the Union. Although the leaflet was not placed in evidence, it is quite apparent that McDaniel and Jackson were under the impression that the Union was touting wages equivalent to those paid by other employers in the area and those wages were substantially higher than those paid by Respondent. This was not an unqualified threat of plant closure upon unionization;²² rather, it was a response tailored specifically to an apparent boast or claim by the Union designed to elicit the employees' votes. This type of statement has been permitted by the Board as legitimate campaign dialogue, and I find that by the statement McDaniel did not violate Section 8(a)(1) of the Act, and shall accordingly recommend that this allegation of the complaint be dismissed.²³

L. Coercion of and Discrimination Against Lewis Hall

The complaint paragraph 21 alleges that on or about December 20 Respondent "prohibited its employees from distributing Union leaflets to their fellow employees during non-working time in non-working areas." The complaint paragraph 22 further alleges that on the same day Respondent issued an oral warning to employee Lewis Hall because of his union activities. These allegations are based on the same incident; the prohibition of distribution is alleged to be a violation of Section 8(a)(1)

and the discipline of Hall is alleged to be a violation of Section 8(a)(3) and (1).

At all times material herein, Respondent has maintained the following valid no-solicitation and no-distribution rules:

NOTICE TO ALL EMPLOYEES

The following rules govern all solicitations and distributions on Company property. These rules supersede, revoke and cancel any and all previous rules and/or understandings on these subjects.

As used in these rules the term "working time" refers to the time that an employee is working or is expected to be working. The term includes both the "working time" of the soliciting/distributing employee to whom the solicitation/distribution is directed. The term "non-working time" refers to breaktime, lunchtime and other times that an employee is not expected to be working.

1. EMPLOYEE SOLICITATION

(a) Solicitation is permitted during employees' non-working time. (For example, employees can solicit for outside activities, can solicit for or against a union, and can obtain signatures on union cards during non-working time.)

(b) Solicitation is prohibited during employees' working time. (For example, employees cannot solicit for outside activities, cannot solicit for or against a union and cannot obtain signatures on union cards during working time.)

2. EMPLOYEE DISTRIBUTION

(a) Distribution is permitted during employees' non-working time but only in non-working areas. (For example, employees can distribute literature of outside activities and organizations and can distribute pro-union and anti-union literature in this situation.)

(b) Distribution is prohibited during employees' working time in all areas. (For example, employees cannot distribute literature of outside activities and organizations, and cannot distribute pro-union and anti-union literature in this situation.)

(c) Distribution is prohibited during both working time and non-working time in working areas.

3. NON-EMPLOYEE SOLICITATION AND DISTRIBUTION

Solicitation and distribution by non-employees on Company property is prohibited.

On December 19 employee Floyd Rockmore was employed on the "C" (4 p.m. to midnight) shift and Lewis Hall was employed by Respondent on the "A" (midnight to 8 a.m.) shift. Hall was under the immediate supervision of Shift Supervisor Charlie Cook and Rockmore was under the immediate supervision of Shift Supervisor Robert Tucker. Both Hall and Rockmore were, at the

²² Cf. *Patsy Bee, Inc.*, 249 NLRB 976 (1980).

²³ *Federal Paper Board Co.*, 206 NLRB 681 (1973), and cases cited therein.

time, members of the Union's organizational committee and had been active on behalf of the Union.

A third employee involved in this incident was Henry (Junior) Braggs. Braggs regularly worked the A shift with Hall, but on this particular night he had been called in early to work part of the C shift. Employees who worked more than one shift were entitled to a break near the end of the first shift upon which they worked before beginning an immediately succeeding shift.

On December 19, Hall arrived at work about 15 minutes early. As he approached the plant, he was handed about four union handbills by someone who was leafletting the gate. Hall walked onto Respondent's property and to a dock, or loading area, which has an entrance to the building. On this dock were parked several forklifts. On one of the forklifts was Braggs who was sitting around doing nothing except, possibly, watching other employees like Hall to come to work. Braggs was taking his break before beginning the A shift.²⁴

The forklift area had never been designated by Respondent as a break area; but that is the way it sometimes worked out. To what extent A and C shift employees had used the forklift area to take breaks was in dispute. (The forklift area was very busy during the B shift and, apparently, no one has tried to use that area to take a break in during that shift.) The most that can be said is that until December 19 the utilization of the forklift parking area as a break area had been sporadic.

As Hall passed by Braggs he handed Braggs a union handbill. Braggs took it without anything being said. Observing this act of distribution was Supervisor Cook.

Hall proceeded into the plant building with handbills still in hand. Hall testified that when it was still a few minutes before the A shift was to begin, he proceeded to a smoking bench where he handed his last handbill to employee Floyd Rockmore who came over to the bench to get it.

Rockmore was originally called by the General Counsel to identify some union authorization cards he had solicited; the General Counsel did not ask him about the receipt of the handbill from Hall. Respondent took Rockmore on direct examination and asked about the incident. Rockmore, directly contrary to Hall, testified that he was about 8 feet away from the smoking bench, talking to Supervisor Tucker about a work-related problem, when Hall walked up and handed him a handbill. Supervisor Tucker testified for Respondent in essentially accord with Rockmore.²⁵

The following day Hall was given a verbal counseling for both acts of distribution which the General Counsel alleges to be a verbal warning issued in violation of Section 8(a)(3) as well as an unlawful prohibition of the pro-

tected activity of distributing literature in nonworking areas on nonworking time.

In its brief the Charging Party cites *Rockingham Sleepwear*, 188 NLRB 698 (1971), and *Oak Apparel*, 218 NLRB 701 (1975), in support of this allegation. In these cases, under the rationale of *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962), the Board found unlawful a prohibition of the circulation of literature in work areas. In both cases the violation was premised upon the fact that the circulations took place only at employee lunchtime; and although the area was ordinarily a work area, during lunchbreaks employees used the work areas involved to eat their lunch because there was no other place available for that purpose.

The use of the forklift parking section of the dock as a break area is not comparable to the use of work areas involved in *Rockingham Sleepwear* and *Oak Apparel*. In the first place, the employees in those cases had no place to take their breaks or eat their lunches other than in the areas which were also regularly used as work areas. In the second place, specific times for lunch and break activity were set aside each day by the employers so that the areas involved could be used for breaks and lunch during those periods. Here, the forklift parking area was used as a break area only at sporadic intervals and at indeterminate times of the day. Since the distribution of the handbill from Hall to Braggs occurred in a working area, the activity was not protected, and the verbal warning issued to Hall because of activity is not a violation of the Act. Accordingly, I shall recommend that the allegation in regard to the Hall-Braggs distribution be dismissed.

I found Rockmore and Tucker credible in their testimony that they were approached by Hall in a work area, and at a time when Rockmore was still working, when the handbill was distributed by Hall to Rockmore. Since this distribution also fell within the ambit of Respondent's valid no-distribution rule, I shall further recommend that the allegation of the complaint based on this distribution also be dismissed.²⁶

M. Harassment of Joe Lewis Robinson

At Respondent's Tifton plant 1 there are 168 looms in the weaving department. On each shift there are four "fixers" who make repairs to the looms as needed. When such repairs are needed, a red mechanical flag can be raised by the weaver, the shift supervisor, the department head (if he is working on a shift in which the need arises and he notices it), or an inspector. Each of the fixers is assigned an area of the weaving department and if a flag is raised on one of "his" machines, he is supposed to go and fix it.

Weavers, who tend several looms on a shift, are paid on incentive basis. Therefore, when a loom stops they

²⁴ I disagree with the statement in Respondent's brief that the record shows that Braggs was "on duty" or "on work time." Braggs was a die-house operator; he did not use a forklift in his work; and he was not reprimanded for having been away from his assigned area, although Supervisor Cook saw the Hall-Braggs exchange described herein.

²⁵ In its brief, the Charging Party argues that Rockmore and Tucker should be discredited because of differences in the recitation of a profane utterance made by Rockmore when he received the handbill and the slight difference in their testimony as to the precise position of the men involved. I find these discrepancies are too minimal to be significant.

²⁶ The complaint paragraph 20 also alleges that the incidents of December 20 show that Respondent: "Disparately enforced its no-distribution rule by permitting non-union employees to violate said rule, while prohibiting similar distribution by pro-union employees." There is no evidence that Respondent knowingly permitted nonunion employees to violate its no-distribution rule, and I accordingly shall recommend that this allegation of the complaint also be dismissed.

are losing money. If a machine is stopped, they can write out "down time" tickets. If the machine is stopped for repairs for more than 15 minutes, this ticket is initialed by the fixer, it is turned in to management, and it is used to figure compensation for the weavers who would otherwise lose all earnings on that machine while it is stopped. (Supervisor Griffith and employee Goodman both testified that the weavers are supposed to write downtime tickets when a machine is stopped, whether or not it is apparent that the repairs will take more than 15 minutes.)

One problem when weaving cloth is that the machines sometimes leave dangling threads at the edges. These threads, usually less than an inch long, are referred to in the plant as "tails." When the machine is making tails, it is, strictly speaking, malfunctioning. But not every time a machine makes tails is the fixer summoned by the "throwing" of a red flag. If the tails are not too numerous, the production is continued and the tails are eliminated in a repair process in the mending department. Therefore, when a machine is making tails it is a matter of discretion if the production is to be stopped for machine repair.

On December 5, employee Joe Lewis Robinson was employed as a fixer on the A (midnight) shift. The other fixers on the shift were employees Randall Simpson, Donny Culpepper, and Willie Halloway. The shift supervisor was Edward Griffith and the department manager (overseer) was Cliff Holbrook. There were two cloth inspectors on that shift, one of whom was Melinda Heartly.

Robinson regularly wore a union T-shirt and a union organizational committee button. Griffith was asked on cross-examination if he knew Robinson and weaver Ben Fowler were union supporters and he replied, "Yes, sir. They wore buttons." Therefore Respondent had knowledge of Robinson's union membership.²⁷

Robinson testified that on the night of December 5 he saw employees Mobley and Sirmans talking to Griffith directly outside Griffith's office and Griffith was showing them "some kind of paper." According to Robinson, Sirmans and Mobley were "openly against" the Union. According to Robinson:

And they was all up there and so I went to see what they was talking about, and I walked up there and Ed [Griffith] had a paper so he put it in his pocket And walked off, so I sort of turned, you know, and went to writing down on a little pad I had in my pocket. I kept a little notebook in my pocket. I kept a little notebook in my pocket where I kept my notes at, and I turned and made like I was writing something

The notebook, which was not offered into evidence, was, according to Robinson, notes of things related to work and relating to the Union that he observed, and he kept it on his person at all times when working. It is the con-

²⁷ Robinson also solicited seven authorization cards for the Union, but there is no evidence of any employer knowledge of that activity. Also Robinson testified under the Act in *J. P. Stevens & Co.*, 240 NLRB 33 (1979), but there is no 8(a)(4) allegation in the complaint and no evidence that the events herein are related to that testimony.

tention of the Charging Party (and apparently the General Counsel) that it was Griffith's observation of Robinson writing, or pretending to write, in his notebook that precipitated what happened next. Just what did happen next is in sharp dispute.

Robinson testified that "it wasn't too much longer" after he pretended to be writing something in his notebook that Griffith went to Robinson's looms and threw "three or four flags." Robinson then went to the looms. As he testified:

Q. What did you do after the supervisor Griffin—Griffith—threw the flags on your looms?

A. Well, I went up, checked, and I couldn't really see nothing wrong with them, so I lifted the flags and let them back down and walked off. If I seed something wrong, I would fix it.

Q. Were the machines functioning properly?

A. To my knowledge they were.

Robinson did testify that he watched the machines for about 10 minutes to make sure they were functioning correctly.

Robinson testified that on the night (actually early morning) of December 6 Griffith threw "twelve or fifteen" flags in his section. He was asked on direct:

Q. Did you repair the machines?

A. Yes, sir, if they needed it, but I didn't really see none that needed repair, no [more] normally than they usually do.

Robinson testified that of all the machines on which flags were thrown, only one had a downtime ticket written up, and that one had two. He noted that a machine across the aisle, which was assigned to another fixer, was similarly malfunctioning and it was not flagged. On the following morning when Department Manager Holbrook arrived, Robinson approached him in the supervisor's office. According to Robinson:

I asked him if I was doing my job to suit him and did he have any objection to the way I was doing my job or whatever, and he told me no, not that he knowed of, but I had one or two machines to run out of order, and we thought we had cleared that up I asked him, "Do you know why the supervisor's raising all these flags on me?" and he went to explain to me how he instructed all the supervisors if they see something wrong to see to it to get it fixed, and so I said, "Well," I said, "You throw them all on just one fixer?" I said, "Why not all of them?" He said well, he instructed the supervisors daily to do that, said he himself had raised a few flags

Robinson asked Holbrook to step out to the weaving room floor. There the men inspected two machines, one in Robinson's section and another in the section of fixer Simpson. According to Robinson, both machines were malfunctioning. According to Robinson:

I said, "Now do you think this one needs flagging?"

He said, "Yeah, it wouldn't hurt," and I said, "Well,

I got a down-time on this machine, and that one down there, the flag's never been raised on it," and I said, "That's what I'm trying to get over [to] you," and he told me that he would talk to Mr. Griffin [sic] and see.

Holbrook testified for Respondent, and there is no essential disagreement with the testimony by Robinson about what was said between those two men. There is no evidence that Holbrook ever said anything to Griffith about the incident.

Robinson testified that on the morning of December 7 Griffith threw somewhere between two and five flags, "then things kind of smoothed off."²⁸

On cross-examination Robinson was asked which, if any, of the machines flagged on December 6 by Griffith were making tails. He replied "probably all of them." He denied ever putting a flag back down without fixing the machine, but also testified that on December 6 he fixed only "about maybe two or three" of the 12 to 15 machines flagged by Griffith. He explained that those were the ones "that had been doing the same thing for the longest [time]."

Former employee Craig Goodman testified that one night, apparently the night Robinson placed as December 6, he saw Griffith throw between seven and nine flags on the looms manned by himself and employees Ben Fowler and Phillip Tillery. Goodman testified that the fixer for both Tillery and Fowler was Robinson. Robinson came to fix their looms but 30 minutes later one of the machines was making tails again. Griffith appeared and, according to Goodman on direct examination:

Q. Did he say—Did he mention Joe's name?

A. When he first come up, he asked me, he said, "Did Joe fix these looms?" and I told him, "Yeah," and then he asked me did I make any down-time tickets, and I told him no, because it only took a minute or two to fix them, and he said, "If that son-of-a-bitch could fix a loom, he'd be dangerous."

Q. What did he do then Mr. Griffin [sic]?

A. And then he told me, he said, then he says, "From now on, you start making down-time tickets because I'm fixing to show you how to straighten Joe Louis' [sic] ass out."

On cross-examination Goodman admitted that a weaving machine that is making tails is malfunctioning and flags should be thrown when a machine is malfunctioning. He further admitted that he never saw Griffith throw a flag on a machine that did not need fixing.

Employee Ben Fowler was called to testify by the General Counsel. According to Fowler, during the night in question, his looms were in the section of fixer Randall Simpson. When asked to describe the events in question, Fowler testified:

Joe Lewis and I were standing there talking and I saw Ed Griffith come down this aisle and start flag-

ging looms. And he flagged about four or five looms on this aisle. And when he got to my two looms where Joe Lewis and I were standing, he walked past us and kept going, and walked into another fixer's section.

According to Fowler none of his machines were involved in this flagging and, in fact, one of his machines was making tails and not flagged.

Griffith denied ever flagging 12 to 15 machines of Robinson's during any one shift. He testified that most he ever threw on one fixer on a shift was three. Griffith denied ever saying to anyone that Robinson would be "dangerous" if he could fix a loom or that he instructed an employee to fill out downtime tickets so that he could "straighten Joe Louis' [sic] ass out." Griffith testified about one particular shift, apparently December 6, in which he had to call Robinson repeatedly to fix a machine and he was corroborated in this testimony by inspector Heartly.

Respondent argues that Goodman should be discredited because of obvious bias against Respondent. Respondent alludes to the fact that Goodman testified that some of the flags thrown were on Fowler's machines while Fowler testified that his machines were not involved. Respondent also points to the fact that Goodman testified that supervisors did not throw flags at all, whereas it is clear from the testimony of all other witnesses that supervisors regularly throw the flags when the machines are malfunctioning.

Conclusions on Robinson's Treatment

The complaint paragraphs 23 and 24 allege that on December 6 Respondent: "Harassed its employee, Joe Lewis Robinson, disparately, and contrary to past practice, by flagging and preparing down time cards on looms repaired by said employee." The General Counsel contended at the hearing that the alleged harassment was inflicted because Respondent was hostile in general toward the Union which was embodied in its committeemen such as Robinson, and further hostile toward Robinson in particular because he wrote, or pretended to write, something in his personal notebook on the morning of December 5. Because of this animus, the General Counsel contended at the hearing, and the Charging Party contends in its brief, that Supervisor Griffith threw more flags than he otherwise would have thrown on Robinson's machines and overlooked malfunctions on other machines serviced by other fixers.

In appraising this contention that Robinson was discriminated against two initial observations must be made. In the first place, there is no evidence that the completion of downtime tickets in any way changes the terms and conditions of employment of the fixers; Robinson himself testified that whether downtime tickets are completed has no effect on the fixer. Second, there is no evidence on this record of hostility toward union committeemen in general and no contention that Respondent had ever before expressed animus toward Robinson's being a committeeman. In fact, except for two isolated interrogations and the one misrepresentation of the rights

²⁸ Neither the General Counsel nor the Charging Party contended that the flagging of machines on December 7 was discriminatory.

of economic strikers, there is no evidence of other unfair labor practices at the Tifton plant in this record.

Although it was not introduced into evidence, there is no dispute that Robinson kept a personal notebook on his person as he worked. Griffith denied ever seeing the notebook, but acknowledged if he had ever heard of it:

I've just heard employees. You know, I'll be casually doing something and somebody will come by and say, Joe Lewis is writing you up, or something like that. That's the only thing I've ever heard.

When I asked what sort of things he would be doing when he heard Robinson was writing in his notebook, Griffith mentioned only work-related activities of his. Robinson, on the other hand, testified that he wrote in his notebook work-related notes and notes relating to the organizational campaign. Since, according to this record, Robinson was not required to keep any sort of notebook in the performance of his duties as a fixer, it is safe to assume that Griffith knew full well that Robinson was taking notes of things other than those directly relating to work activities.

I credit Robinson's testimony that on December 5 he approached Griffith as he was talking to employees Mobley and Sirmans (both of whom had the reputation of being against the Union) as they were talking in front of the supervisor's office, and that he made a pretense of writing something in his notebook. I further believe, and find, that almost immediately thereafter, Griffith raised three or four flags on Robinson's machines. I further find that Griffith raised several more flags on Robinson's machines on the morning of December 6. Just how many were raised on December 6 is conjectural, it was certainly more than on the one machine admitted by Griffith, but probably less than the "twelve to fifteen" claim by Robinson. But whatever the number, the flurry of flag-raising by Griffith does not make out a violation by itself.

The raising of three or four flags on Robinson's machines on December 5 came immediately after the pretense of notebook-writing. It is safe to infer, as I do, that the pretense caused Griffith to raise the flags at that time. But that hardly ends the inquiry either.

Was the notebook-writing pretense protected activity? I believe not. Assuming that Respondent had knowledge of previous notebook-writing by Robinson but condoned it, here Robinson was making a pretense of writing. It was apparently an elaborate one, for it is clear that he wanted Griffith, Mobley, and Sirmans to note that he was memorializing their conference (in a sort of role-reversed impression of surveillance activity). Thus, Robinson was not engaging in protected concerted activity; he was game-playing. He was baiting Griffith, and Griffith responded in kind. Griffith raised three or four flags on machines which, while making tails and technically malfunctioning, would have otherwise gone unnoticed. However, this required Robinson to do nothing more than watch the machines for about 10 minutes and put the flags back down. This was not a change in Robinson's terms and conditions of employment, was not onerous, and did not constitute discrimination under the Act,

even assuming that the notebook-writing pretense was protected.

I credit Goodman's testimony that at one point, apparently during the morning of December 6, he was approached by Griffith and told to make out downtime tickets every time a machine stops and that Griffith said he intended to straighten out Robinson. I realize that Goodman testified that two flags were thrown on Fowler's loom and Fowler testified that his looms, which were not even in Robinson's section, were not involved at all. I further realize that Goodman was wrong in other testimony in which he stated that shift supervisors rarely, if ever, raise flags on machines. However, Goodman was a former employee who apparently had nothing to gain by his testimony, and he otherwise impressed me favorably.

As I have noted, downtime tickets had no impact on the terms and conditions of employment of the fixers such as Robinson. However, the reference to downtime tickets by Griffith to Goodman was not entirely meaningless. A collection of such tickets could constitute supportive documentation if Respondent did intend to discipline a fixer such as Robinson. Since failure of the incentive-paid weavers to execute the tickets saved Respondent money, and since Griffith immediately connected the downtime tickets to straightening out Robinson, the inference that future discipline of Robinson is what Griffith had in mind at the time is compelled.

But the discipline or discrimination never came. Robinson was never asked to do anything other than that for which he was paid.²⁹ All of the machines which were flagged on December 6, as well as December 5, were malfunctioning and one was especially bad. Therefore, even though Griffith passed up at least one machine (Fowler's and possibly others) which was malfunctioning on December 6, making sure that Robinson was working that particular shift does not constitute discrimination against Robinson as envisioned by the Act (assuming the activity of feigned note-taking was protected in the first place).

Accordingly, I shall recommend that the allegation of the complaint of alleged discrimination by harassment of Joe Lewis Robinson be dismissed.

Refusal to Bargain

The complaint alleges that since October 21 the Union has been the representative of the majority of the employees in an appropriate unit of the 715 production and maintenance employees of both Tifton plants. While the General Counsel did not submit a brief, the Charging Party's brief contends that 366 employees designated the Union as their collective-bargaining representative by the execution of valid authorization cards. The Union and the General Counsel contend that because of the unfair labor practices committed by Respondent it should be ordered to bargain with the Union as majority representative under the authority of the Supreme Court decision in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), and that its failure to have done so after a request to bargain

²⁹ He was even sent to a training school to learn how to fix the looms.

was made on October 21 is a violation of Section 8(a)(5) of the Act. The complaint also alleges as an independent violation of Section 8(a)(5) Respondent's admitted action on January 9 in unilaterally implementing changes in the unit employees' pension plan.

In *Gissel*, the Court upheld the Board's power to issue bargaining orders even if the union has not been established as the majority representative through the election processes where the Board finds that the employer involved has engaged in either "outrageous" or "pervasive" unfair labor practices that could not be remedied or "less pervasive practices which nonetheless still have the tendency to undermine strength and impede the collective bargaining processes." In the latter situation the Board has the authority to issue a bargaining order, but only where it finds that "the possibility of erasing the effects of past practices and of insuring a fair election by the use of traditional remedies, though present, is slight and that employee sentiments once expressed through cards would, on the balance, be better protected by a bargaining order," 395 U.S. at 613-615.

Assuming that the Union established a majority at any material time herein,³⁰ in this case the three violations of Section 8(a)(1) of the Act were not so egregious as to preclude the holding of a fair election. The two interrogations found herein were not part of a systematic program of interrogating employees, nor were they accompanied by threats or other statements or conduct in violation of the employees' rights, nor were they perpetrated in circumstances which would cause the acts to become known to employees other than the two who were interrogated. The threat to deny employees the rights of economic strikers to reinstatement upon departure of permanent replacements is most unlikely to have any effect upon future elections. While the action constitutes an unfair labor practice, it was premised on a triple hypothetical: a breakdown in negotiations, the calling of an economic strike by the Union, and success at securing permanent replacements. In this posture, the threat to deny employees reinstatement rights if they engaged in an economic strike at some uncertain future date is unlikely to have had a lingering effect upon the employees who read the notice in which it was contained.

Therefore, the unfair labor practices found herein fall in the third category of cases recognized by *Gissel* in which "minor or less extensive unfair labor practices, which, because of the minimal impact on the election machinery, will not sustain a bargaining order." 395 U.S. at 615.

Accordingly, I shall recommend that the Board dismiss the 8(a)(5) allegations of the complaint.

Upon the basis of the foregoing findings of fact and the entire record, I make the following

³⁰ Were the issue not mooted, I would find that the Union did not establish a majority in the two plants at any relevant point of time herein. Assuming the existence of the 8-card majority claimed by the Union to have existed on October 21, it was effectively dissipated by any 8 of the approximately 48 valid revocations of those cards executed and delivered to agents of the Union before the commission of any of the three unfair labor practices found herein. See *J. P. Stevens & Co.*, 244 NLRB 407, 452 (1979).

CONCLUSIONS OF LAW

1. J. P. Stevens & Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees about their union membership, activities, or desires, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By threatening to deny employees their statutory rights to reinstatement should they engage in an economic strike even if permanent replacements are later terminated, Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

5. Respondent has not otherwise violated the Act as alleged herein.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices violative of Section 8(a)(1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

Upon the basis of the unfair labor practice allegations herein and the long, outrageous history of Respondent's continuous refusal to obey the unfair labor practice provisions of the National Labor Relations Act, the Charging Party requests certain extraordinary remedies including: mailing and reading of notices to employees, the granting of access for organizational purposes, the establishment of an interim grievance procedure, an order that Respondent furnish the Union all statements of employment policy including "all guidelines used to establish employee conduct, disciplinary measures, criteria utilized in establishing wage rates and fringe benefits, as well as policy outlines in the EEOC and OSHA areas," and an order to reimburse the Union for organizational and litigation expenses. Since I have found that the unfair labor practices established herein are minimal in nature, the imposition of the order requested by the Union would be inappropriate.

Nor shall I recommend that the notice prescribed herein be signed by Respondent's president and chairman of the board of directors and posted at all of Respondent's corporate facilities as the Charging Party further requests. As stated by the Board in *J. P. Stevens & Co.*, 247 NLRB 420 fn. 3 (1980): "The Board reviews all cases on their merits and grants or denies remedies based on the record as a whole." That is, there is no "traditional" remedy in *Stevens* cases, as the Union appears to argue. The record in this case reveals the commission of only three unfair labor practices which were separate and minimal in an impact. To treat this case as if it were one of the many previously appearing before the Board and the courts would dilute the effectiveness of any remedy in cases where outrageous or pervasive unfair labor prac-

tices had been found and extraordinary remedies required to erase the effects thereof.

Accordingly, I shall recommend that the Board issue the following recommended order which shall be limited to the Tifton, Georgia plants.

ORDER³¹

The Respondent, J. P. Stevens & Co., Inc., Tifton, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees regarding their membership in, or activities on behalf of, or desires for representation by, Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC.

(b) Threatening employees that Respondent would deny them their statutory reinstatement rights should they engage in an economic strike and thereafter be permanently replaced even if the permanent replacements later terminate their employment.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) Post at its Tifton, Georgia facilities copies of the attached notice marked "Appendix."³² Copies of said notice on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the allegations in the complaint of violations of Section 8(a)(1), (3), and (5) of the Act be dismissed except insofar as specific violations of Section 8(a)(1) are herein above found.

³¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT interrogate our employees regarding their membership in, activities on behalf of, or desires for representation by Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC.

WE WILL NOT threaten to deny employees their statutory rights to reinstatement should they engage in an economic strike and thereafter be permanently replaced even if the permanent replacements later terminate their employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

J. P. STEVENS & CO., INC.

SUPPLEMENTAL DECISION

DAVID L. EVANS, Administrative Law Judge: On October 16, 1981, the Board remanded this proceeding for reconsideration in light of a brief which had been previously filed by the General Counsel but not received by me. I have reviewed the record and argument and authorities relied upon by the General Counsel for his contentions that Respondent has violated Section 8(a)(1) and (3) of the Act as alleged in the complaint but not sustained in my original Decision. The General Counsel's arguments are essentially duplicative of those made by the Charging Party in its brief which, as I noted in my original decision, is excellent. For this reason a discussion here of all the issues considered on remand would be nothing but a needless exercise in repetition. It suffices to say that I find no reason to change any of the findings of fact or recommended conclusions of law¹ which I previously reached.²

Accordingly, I adhere to my original Decision.

¹ G.C. Br. 13 urges that the December 18, 1979 speech by Donald Johnson contains an unlawful threat of futurity. I did not pass on this allegation because it is not contained in the complaint. Assuming arguendo, the allegation is properly before me, I recommend its dismissal as not supported by the evidence.

² For this reason I have not reviewed the General Counsel's brief or the record on the issues of appropriate unit, majority status, or other issues which would be necessary to consider had the General Counsel proved the predicate for the order he seeks pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).